

Missouri Small Business Regulatory Fairness Board



**Annual
Report**

2008

Missouri Small Business Regulatory Fairness Board

Introduction

The Missouri Small Business Regulatory Fairness Board (SBRFB) believes the most effective way to accomplish regulatory fairness for small businesses is by fostering communication during the promulgation, enforcement, and review of rules and regulations. The SBRFB is pleased with the progress most state agencies have shown during FY 2008. Overall, the state agencies have gained knowledge and experience relative to making Missouri more friendly for small businesses.

The SBRFB 2008 Annual Report is based on information gathered during FY 2008. This Report includes small business comments and the corresponding state agency's response. The Board submitted recommendations to Missouri state agencies on improving regulatory fairness. One way the SBRFB remains in contact with small businesses is through the free Small Business Regulatory Alert Subscription.

This Report also includes an evaluation of each state agency's performance based on their efforts to adhere to the requirements set forth in the statute. Finally, FY 2009 recommendations for each state agency are set forth in the Report.

Background

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules;
- 2) State agencies take into account small businesses when enforcing new rules and regulations;
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed;
- 4) Established the Small Business Regulatory Fairness Board;
- 5) Granted judicial review to small businesses; and
- 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the Commission.

Board Responsibilities

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

Membership

Commission Members

Randy Angst, Lebanon, Chairman, September 2008 - present
 Scott George, Mt. Vernon, Chairman, January – September 2008, term expired 11/30/08
 Micheal Ocello, St. Louis, Vice Chairman, January – September 2008
 Senator Kevin Engler, Farmington
 Phillip Franz, West Plains
 Sadik Kukic, St. Louis
 Representative Luke Scavuzzo, Harrisonville
 Nancy Zurbuchen, Kansas City
 C. Bob Bess, St. Louis
 Vacant Position

DED Staff

Marcy Mealy, Missouri Department of Economic Development

State Agency Liaisons

OA-Trent Summers, Mark A. Kaiser

MDA-Kurt Valentine

MDC-Janet Bartok

DOC-Matt Sturm

Eileen Coffelt-Adult Institutions

Joan Hays-Probation and Parole

Karen Korenberg-Rehabilitative Services

Gary Stoll-Human Services

DED-Jennifer George

DESE-Mark Allan Van Zandt

DHSS-Bret Fischer

DHE-Shannon Koenig

DIFP-Connie Clarkston-Professional Registration

Grady Martin-Insurance & Financial Institutions

DOLIR-Shelly Kintzel

DMH-Melissa Manda

DNR-Leanne Tippet Mosby

DPS-David Scott

Capt. Tim McDonald-

Missouri State Highway Patrol

Darla Otto-

Missouri State Water Patrol

Greg Carrell-Fire Safety

Pete Lobdell-Alcohol and Tobacco

Susan McNary-

Missouri Veterans Commission

David Welch-Gaming Commission

Duane Nichols-SEMA

DOR-Casey Richey

DSS-Jennifer Stilabower

MoDOT-Brenda Treadwell-Martin

Meetings

Seven meetings have been held in FY2008 by the Board on the following dates and at the following locations:

- September 13, 2007, Jefferson City
- December 17, 2007, Conference Call
- January 16, 2008, Jefferson City
- May 6, 2008, St. Louis
- June 17, 2008, Conference Call
- September 3, 2008, Springfield
- October 27, 2008, Conference Call

In addition the SBRFB held four Public Hearings in accordance with each of the four meetings in Jefferson City, St. Louis and Springfield for small business testimonies.

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Joint Federal and State Regulatory Fairness Hearing

The first ever joint Federal and State Regulatory Fairness Hearing was held on May 6, 2008 in St. Louis, MO at the Center for Emerging Technologies between the Missouri Small Business Regulatory Fairness Board, the U.S. Small Business Administration's Region VII Regulatory Fairness Board and US SBA National Ombudsman Nicholas N. Owens. The federal board region encompasses the states of Missouri, Iowa, Kansas and Nebraska. This event was part of the 2008 Small Business Week of Eastern Missouri, Inc.

Both the federal and state boards heard from small business owners expressing their concerns about federal and state compliance practices and regulatory requirements. The hearing was eventful with 11 small businesses testifying on regulatory issues affecting them.

Comments and complaints presented during the forum were directed to the appropriate federal and state regulatory agencies. Information collected at the hearing will also be shared with leadership of federal and state regulatory agencies to assist them with their enforcement actions.

Regulatory Alert Subscription

The SBRFB offers small businesses the opportunity to join a Regulatory Alert Service. As proposed rules are received by the Board, the SBRFB will send out, via email, Regulatory Alerts, rules and regulations with a small business impact statement, to interested small businesses. The Regulatory Alerts will be sorted by State Agency and each small business will have the opportunity to choose from which State Agencies they would like to receive alerts. The system allows businesses to subscribe and unsubscribe at any time. There is no cost for the subscription and anyone can participate. To subscribe and unsubscribe small businesses may visit the SBRFB website at www.sbrfb.ded.mo.gov and click on the Subscribe to Regulatory Alerts button.

SBRFB FY2008 Recommendations

The SBRFB submitted recommendations for each state agency as we work together to achieve regulatory fairness for small businesses.

1. State agencies should provide formal training, on an annual basis, for all rule development, enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Missouri Small Business Regulatory Fairness program. The training should sensitize employees to the unique needs of small businesses.

-The SBRFB took into consideration the willingness of the liaison to initiate an annual SBRFB Training and if the training was completed in the July 1, 2007 through June 30, 2008 timeframe.

2. State agencies should include a small business impact statement, which meets the requirements of Missouri's regulatory fairness statute, for every proposed rule that impacts small businesses.

-The SBRFB took into consideration whether or not state agencies issued small business impact statements (when required by statute). The SBRFB put emphasis on whether agencies engaged small businesses during the promulgation stage of the regulation.

3. State agencies should assign division level liaisons to ensure proper attention to and distribution of small business regulatory requirements. The SBRFB will consider division separation for the 2008 State Agency Evaluation Grades based on these liaisons.

-The SBRFB gave each agency the benefit of deciding whether or not division level liaisons were an effective option for them. The SBRFB took into consideration the timely response by each agency.

The Department of Corrections, Department of Insurance, Financial Institutions and Professional Registration and Department of Public Safety decided to assign additional liaisons. SBRFB applauds their efforts and considers this recommendation met for all agencies. For the FY2009 evaluations, those departments choosing division level liaisons may receive separate evaluations as determined by the Board.

4. Please note that all 2007 recommendations were still in force and will be subject to evaluations of the FY 2008 report. The 2007 recommendations include the following...
 - 1) State Agencies should designate a Regulatory Fairness Program representative as the primary contact point between SBRFB and the agency. This individual will be responsible for investigating comments from small businesses and ensure timely review and response. This individual should be independent of enforcement or compliance activities.

-The SBRFB took into consideration whether or not the agency maintained a liaison throughout the year.

- 2) State agencies should respond within 60 days to all comments generated through the Missouri Small Business Regulatory Fairness program.

-The SBRFB took into consideration whether the agency responded back to the small business and the SBRFB within the statutory deadline of 60 days and if attempts were made by the agency to investigate the comment.

- 3) Each agency should consider the size of businesses when imposing fines (RSMo 536.320) when appropriate.

-The SBRFB took into consideration the comments received from small business on state agency imposing fines or penalties.



FY2008 State Agency Evaluation

| STATE AGENCY | TRAINING INITIAL & ANNUAL | SMALL BUSINESS IMPACT STATEMENT | SMALL BUSINESS DIVISION LEVEL LIAISON | MAINTAIN AGENCY LIAISONS | 60 DAY REPLY TO ALL COMMENTS | SIZE OF BUSINESS WHEN FINING |
|--------------|---------------------------|---------------------------------|---------------------------------------|--------------------------|------------------------------|------------------------------|
|--------------|---------------------------|---------------------------------|---------------------------------------|--------------------------|------------------------------|------------------------------|

| | | | | | | | |
|---|----------------|---|------------------|---|---|----------------|-----|
| Office of Administration | F | F | F ¹ | F | B | F ¹ | N/A |
| Agriculture | F | F | D | F | A | D ² | N/A |
| Conservation | A | A | N/A ³ | A | A | N/A | N/A |
| Corrections | A | A | N/A | A | A | N/A | N/A |
| Economic Development | A | A | D ⁴ | A | A | N/A | N/A |
| Elementary & Secondary Education | A | A | N/A | A | A | F ¹ | N/A |
| Higher Education | A | A | N/A | A | A | N/A | N/A |
| Health & Senior Services | A | A | A | A | A | N/A | N/A |
| Insurance, Financial Institutions & Professional Registration | D ⁵ | | B | A | C | B ⁶ | N/A |
| | | | | | | | |
| | | | | | | | |
| Labor & Industrial Relations | A | A | C | A | A | A | N/A |
| Mental Health | A | A | N/A | A | A | N/A | N/A |
| Natural Resources | C ⁷ | A | C | A | A | A | N/A |
| Public Safety | A | A | C | A | A | C | N/A |
| Revenue | A | A | A | A | A | A | N/A |
| Social Services | A | A | B | A | A | N/A | N/A |
| Transportation | A | A | N/A | A | A | A | N/A |

- ¹ Missouri Assistive Technology Advisory Council Regulations.
² Current Comment Under Review Will Be Included in the 2009 Report.
³ Not Applicable Per RSMo.536.300.1.
⁴ Public Service Commission Regulations with Impact Statements.
⁵ The Department has a Plan in Place to Ensure Small Business Regulatory Fairness Training.
⁶ Current Comment Under Review Will Be Included in the 2009 Report.
⁷ Two Training Sessions Completed by 6/30/2008. Remainder Scheduled through 1/21/2009.

Positive Trends

The Department of Revenue (DOR) was faced with implementing the provisions of Missouri Senate Bill 30 (SB 30) exempting state sales taxes for everything used or consumed by Missouri manufacturers for manufacturing, materials recovery or research and development purposes. DOR did an outstanding job with outreach to businesses, both large and small, when researching how this legislation affects Missouri businesses and how to regulate it. They worked with manufacturing groups, NFIB, Missouri Chamber of Commerce, retailer associations and utility contractors. DOR traveled the state holding many seminars, attended by many large and small businesses looking for input on how to develop the rules. The Department received numerous recommendations and utilized these recommendations in the formulation of the regulations implementing SB 30. DOR is to be commended for this approach as it serves as a model for including small businesses in promulgating new regulations.

The Missouri Department of Natural Resources (DNR) Ombudsman Program is an excellent example of the type of outreach state agencies should be doing to serve their consumers. DNR assigned regional Ombudsmen to facilitate communication on environmental protection needs, park and historic sites, historic preservation, energy conservation and other issues experienced by the public, small and large businesses and local governments. The ombudsmen serves as the initial contact and can assist in making connections to proper staffing in hopes of resolving the situation. There are seven ombudsmen located throughout the state providing services to communities. Also within the department is the Small Business Ombudsman appointed by the Governor to serve the needs and interests of Missouri small businesses.

Overall, the board is pleased with the progression by each of the agencies. The board has seen improved response times and a better understanding of the initiatives outlined in the 536, RSMo. The board will continue to work with each of the agencies to improve upon their current small business regulatory fairness programs.

Areas of Improvement

One area needing improvement is the involvement of small businesses during the promulgation stage of rule development. The small business impact statement asks each department how they engaged small businesses during the development of the regulation. Many proposed rules do not include impacted small businesses in direct violation of the statute. One proposed rule maker commented "I did not talk to any small businesses as I already took into account what they need." Many of the agencies are including departmental boards and councils for their small business involvement. The board needs additional information about the composition of these said workgroups. The board believes that the involvement of small businesses at the beginning will help to minimize legal challenges, avoid delays, improve public support and improve compliance with the regulation. Involvement can be accomplished by performing outreach to directly affected small businesses, industry and professional associations, conducting public hearings and special hearings, round tables and forums.

The SBRFB is concerned with small business impact statements not being properly submitted to the board per statute. The SBRFB received 77 impact statements this fiscal year. The board began comparing their records with the Missouri Register to ensure proper compliance. The board questioned an additional 47 regulations filed without impact statements asking for additional information clarify the agency's reason for lack of impact. Small business impact statement are exempt in certain situations when the proposed rule is being promulgated on an emergency basis, where the rule is federally mandated, or where the rule substantially codifies existing federal or state law. The Department of Conservation is also exempt from small business impact statements. In addition, while emergency rules are exempt very rules become permanent rules, small business involvement is still required

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The SBRFB is concerned with the amount of regulations and changes to regulations occurring each year. There are a vast number of regulations on the books that businesses, both large and small, have a difficult time keeping up with. In 2007, the Missouri Register totaled 2,617 pages of emergency rules, proposed regulations, order of rulemaking, notices of dissolutions and executive orders.

FY2008 Small Business Comments

- 1) Rita Larson, Wind Generator Hauling Lease Anderson Trucking Service, Kingsville, 7/9/2007
- 2) Linda Sohm, Midwest Game Supply Company, Kearney, 12/14/2007
- 3) Scott George, Mid-America Hearing Center, Mt. Vernon, 2/6/2008
- 4) Bruce Mayhew, Beltone Hearing Aid Center, Cape Girardeau, 2/7/2008
- 5) Joyce Hill Cooley, Miracle Ear, Perryville, 2/8/2008
- 6) Floyd Hansett, Hearing Solutions, Mexico, 2/8/2008
- 7) Bernard Libel, Libel Hearing Aid Center, Saint Joseph, 2/12/2008
- 8) Samuel Hopmeier, Hearing Aid Center, Chesterfield, 2/13/2008
- 9) Nancy Fraisier Ellis, Lake Prof Hearing Aid Center, Camdenton, 2/15/2008
- 10) Robert Allison, Allison Assistive Hearing, Arnold, 3/19/2008
- 11) Raymond Young, Milk Regulatory Consultants, Russellville, 5/5/2008
- 12) Jonathan Justus, Justus Drugstore, Smithville, 6/27/2008

Rita Larson

Ms. Larson's husband is an owner/operator leased to Anderson Trucking Service. They were having problems with hauling wind generators into the state. The state transportation requires two highway patrols (off duty) to escort them through the state (each truck also is escorted by two civilian vehicles) and every truck must have a DOT inspection every time it comes into the state. The Larson's believe the fees that are charged are outrageous. They report that the highway patrol gets \$1000 per truck to go 16 miles into the state while their truck makes \$3.00 a mile. They also imply that the highway patrol escorts are not always available and state "They (state highway patrol) don't work past 3:00 pm which leaves the trucks sitting more, nor will they come on Saturday. They want the truck sitting along a 2 lane highway waiting on them to escort them into the state sometimes that means our truck will be sitting till Monday. This is costing us lots of money. We are going to chose not to haul into Missouri anymore. It's not profitable for anyone but the state."

State Agency Response: The Missouri State Highway Patrol and civilian escorts serve two different purposes. The highway patrol's function is to safely escort you to your destination and make you visible to the public. The civilians' escorts function is to protect your driver and load, and assist in the event of a breakdown such as a stall, flat tire, etc. The motor carrier representatives on the workgroup were in favor of adding the highway patrol escorts and we've received mostly positive feedback regarding the patrol escorts because the traveling public takes notice, making it safer. The contract for the patrol escort and escort fee is between the patrol and the transporter.

SBRFB Response: The Board will send a follow up letter to MoDOT for more clarification of the workgroup and its composition and what was the highway patrols role during the development of this rule.

State Agency Response: The MSHP was involved during the development of this regulation and no problems were foreseen at the time. A cap on the escort fees was not considered. The fee is based on the direct costs incurred by the MSHP to provide the escort. Of the seven member workgroup that worked on this regulation five were small businesses. They also gave examples of additional states that have similar programs. The Department testified that there would be another workgroup re-evaluating the regulation, the workgroup would occur sometime in the next few months.

SBRFB Response: The Board sent correspondence on January 30 inquiring about the workgroup. The Board was especially interested in knowing how many smalls were involved with the workgroup.

State Agency Response: A response was received on May 28, 2008.

Linda Sohm

Ms. Sohm is the owner of Mid West Gaming Supply and sent in a comment on a new regulation published by the Department of Public Safety-Missouri Gaming Commission. This regulation impacts her directly within her industry. The rule sets forth, on top of the current regular \$5,000 a year she spends, licensing additional key personnel and charging \$1000 for each to investigate and \$100 year to keep them licensed. The rule doesn't relay who decides how many people would be called key personnel.

The small business impact statement listed Ms. Sohm's business as the only small business affected by the new regulation. She was never contacted during the development of the rule.

State Agency Response: No response has been received in the 60 day time period.

SBRFB Response: The Board sent a reminder letter on March 5 to the Department of Public Safety stating that their timely correspondence is reflected in the evaluations. The SBRFB also sent an invitation to the May 6 Public Hearing to the Gaming Commission to discuss this comment.

State Agency Response: Gene McNary attended the May 6 Public Hearing and testified about Ms. Sohm's comment. Mr. McNary testified that the license fee may be waived at the discretion of the Executive Director of the Gaming Commission if they deem there is a hardship. This is administered through an inter-agency policy and there is nothing in written form that says who and what the Executive Director will consider in order to waive the fee. He also testified that there is a definition of who qualifies as key personnel but would have to get back to the Board on the exact information.

SBRFB Response: The Board sent additional correspondence asking for clarification regarding the definition of key personnel to be certified and whether or not this is policy driven or a state regulation. The Board also would like to know what the criteria is for the Executive Director when waiving fees. Is there anything in written format to guide the Director?

State Agency Response: No response has been received to date.

Scott George
Bruce Mayhew
Joyce Hill Cooley
Floyd Hansett

Bernard Libel
WF Samuel Hopmeier
Nancy Ellis Fraiser
Robert Allison

All the following comments came from individuals who own and operate hearing centers across the state of Missouri. The proposed rule, 1 CSR 70-1.010/5 CSR 110-1.010, restricts Missouri licensed Hearing Instrument Specialists (HIS) from designating telecommunications equipment and from providing consumer support and continuity of care to their patients. Hearing Instrument Specialists are on the front line of accessibility and information to the hearing impaired. Their public advertisement of services available to hearing handicapped educates not only the hard of hearing but the family support system. All encouraged the Missouri Assistive Technology Council (MATAC) to follow precedent of MO Medicaid rule 13 CSR 70-45.010, by allowing Audiologists, Hearing Instrument Specialists, and Physicians to select and distribute equipment and counsel patients on appropriate use.

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All wrote directly to the Missouri Assistive Technology Advisory Council and copied the SBRFB on each of their letters. The SBRFB in turn sent copies of the comments to the Office of Administration and Department of Elementary and Secondary Education to ensure and begin proper correspondence with these eight comments. The comments were in response to the filing of 1 CSR 70-1.010/5 CSR 110-1.010 to which was filed without an impact statement.

State Agency Response: No response was received in the 60 day time period.

SBRFB Response: The SBRFB sent an invitation to the Office of Administration, Department of Elementary and Secondary Education and the Missouri Assistive Technology Advisory Council inviting them to attend the May 6, 2008 public hearing and participate by speaking toward the eight comments. At the hearing Nancy Frasier Ellis and Scott George testified on how this rule impacts them. The MATAC sent a letter to be entered into record about their program and services but the letter did not address the comments made by any of the eight small businesses. The Board sent a reminder letter to the Office of Administration and Department of Elementary and Secondary Education.

State Agency Response: No response has been received to date.

Raymond Young

The Missouri State Milk Board has denied Mr. Young's company, Milk Regulatory Consultants (MRC), under the NCIMS Grade milk program as an official designated commercial laboratory and has blocked MRC from bidding on any state contracts due to the lack of certification. Mr. Young has 18 years experience with milk regulatory inspection with the Department of Health and Senior Services including the oversight enforcement of grade milk; he then embarked on opening his own regulatory consulting laboratory. In order to become a certified laboratory MRC needs to be approved and certified by the Missouri Milk Board. It is a requirement in Missouri that only certified companies may test milk. The initial request was first tabled by the Milk Board in June 2007 and then in August 2007. Mr. Young received a letter that denied his request for the certification of his laboratory. It was conveyed that there was no need for additional laboratories. Mr. Young then requested a hearing and was told that he could not have a hearing because he was not Grade A certified. No information was provided about the denial and no evaluation of his laboratory was included. In the meantime, MRC was awarded a contract with the federal government. MRC was one of three laboratories awarded this contract in the world. This is recognition not only for the business but for a Missouri owned business. Because MRC is not certified, Mr. Young contracted the work out in order to stay within the parameters of the law and fulfill the contract that was granted by the federal government.

State Agency Response: The Department of Agriculture referred the SBRFB to the Attorney General's office due to the department being in litigation with MRC.

Jonathan Justus

The Justus family originally started a drugstore business in Smithville, MO and had been located in the historic building downtown generation to generation. Jonathan Justus returned home to Smithville to his family's business location and decided to restore the family business to its former glory and open the building as a restaurant. Mr. Justus named the restaurant to honor the history of his family's business and the impact that it had, in years past, on the community. An investigator from the Missouri Board of Pharmacy informed the business that they were not to use "drugstore" in the title of the restaurant. They were informed that drugstore in the title implied to customers that they could get medical advice from the restaurant. They reported that the investigator made threats to the business to shut down the restaurant; the business has felt intimidated and singled out. Mr. Justus commented that "this small business is a credit to the businesses in Smithville and is an economic institution vital to the community. Justus Drugstore Restaurant invests in the economically, underperforming downtown area, and keeping the money

local by using local suppliers that live and work in Smithville and the surrounding area, therefore keeping the dollar within the community. The Justus Drugstore Restaurant location is a legacy and historically important to the Smithville community. The restaurant was unaware of this regulation and thought they would have an opportunity to work with the Pharmacy Board in this situation.

State Agency Response: The Missouri Board of Pharmacy sent correspondence to the General Counsel for the Department of Economic Development stating the Board has no jurisdiction over this matter, the boards authority stems from existing and proposed rules and the affect of those rules on small businesses. The Pharmacy Board action is based upon the provisions of Chapter 338 and not on any proposed or enacted rules.

FY2008 SBRFB Correspondence

Office of Administration

On February 5, 2008 the SBRFB sent correspondence to the Office of Administration asking for clarification on four regulations being filed without impact statements in the December 2007 Missouri Register. The SBRFB sent a reminder letter on May 16, 2008 about the open inquiry. No response has been received to date.

Department of Agriculture

On February 5, 2008 the SBRFB sent correspondence to the Department of Agriculture asking for clarification on two regulations being filed without impact statements in the July 2007 Missouri Register. The SBRFB sent a reminder letter on May 16, 2008 about the open inquiry. No response has been received to date.

On March 5, 2008 the SBRFB sent correspondence to the Department of Agriculture asking for additional information to be supplied from their impact statement on the involvement of small businesses during the development of the regulation/amendment. The SBRFB sent a reminder letter on May 16 about the open inquiry. No response has been received to date.

Department of Insurance, Financial Institutions and Professional Registration

On August 30, 2007 the SBRFB sent correspondence to the Department of Insurance, Financial Institutions and Professional Registration asking for additional information to be supplied from their impact statement on the involvement of small businesses during the development of the regulation/amendment. A timely response was received by the Board supplying the additional information requested. The Board was satisfied with the department's explanation of involvement of smalls during the promulgation of the rule. The Board decided to close this comment.

On February 5, 2008 the SBRFB sent correspondence to the Department of Insurance asking for clarification on 34 regulations being filed without impact statements in the July-December 2007 Missouri Register.

Department of Labor and Industrial Relations

On August 9, 2007 the SBRFB sent correspondence to the Department of Labor and Industrial Relations asking for additional information to be supplied from their impact statement on the involvement of small businesses during the development of the regulation/amendment. A timely response was received by the Board supplying the additional information requested. The Board was satisfied with the department's explanation of involvement of smalls during the promulgation of the rule. The Board decided to close this comment.

On February 5, 2008 the SBRFB sent correspondence to the Department of Labor and Industrial Relations asking for clarification on one regulation being filed without an impact

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statement in the October 2007 Missouri Register. A timely response was received by the Board detailing why the rule did not require an impact statement. The Board was in agreement with the department that an impact statement was not needed because of the rule exemption outlined in 536.300.4, RSMo.

Department of Natural Resources

On June 5, 2008 the SBRFB sent correspondence to the Department of Natural Resources asking for additional information to be supplied from their impact statement on the involvement of small businesses during the development of the regulation/amendment. A timely response was received by the Board supplying the additional information requested. The Board is currently reviewing their response.

Department of Revenue

On August 31, 2007 the SBRFB sent correspondence to the Department of Revenue asking for additional information to be supplied from their impact statement on the involvement of small businesses during the development of the regulation/amendment. A timely response was received by the Board supplying the additional information requested. The Board was satisfied with the department's explanation of involvement of smalls during the promulgation of the rule. The Board decided to close this comment.

On February 5, 2008 the SBRFB sent correspondence to the Department of Revenue asking for clarification on four regulations being filed without impact statements in the September and November 2007 Missouri Register. A timely response was received by the Board detailing why the rule did not require an impact statement. The Board was in agreement with the department that an impact statement was not needed because of the rule exemption outlined in 536.300.4, RSMo.

Department of Transportation

On February 5, 2008 the SBRFB sent correspondence to the Department of Transportation asking for clarification on two regulations being filed without impact statements in the October and December 2007 Missouri Register. A timely response was received by the Board detailing why the rule did not require an impact statement. The Board was in agreement with the department that an impact statement was not needed because of the rule exemption outlined in 536.300.4, RSMo.

SBRFB FY2009 Plans

The SBRFB will continue to act in the interest of small businesses across the state of Missouri by responding to comments received via Comment Form and Public Hearings. The board will continue holding Public Hearings across the state allowing the small business voice to be heard. The Regulatory Alert Subscriptions will help to create awareness for small business owners when dealing with state agency regulatory matters.

The SBRFB will continue to create a working relationship with Missouri State Agencies with expectations of decreasing the unfair burdens on small businesses. The SBRFB will confirm the state agencies have complied with the eight recommendations of the SBRFB and will evaluate accordingly.

The SBRFB will continue to improve outreach and communication to professional associations, affiliations and organizations. The SBRFB will improve their relations with the Joint Committee on Administrative Rules (JCAR) and the Secretary of States (SOS) office. The board will work with state agencies, JCAR and SOS to identify and question regulations that have the appearance of effecting small business but where no impact statement had been filed. All of these entities will assist the SBRFB in improving the regulatory outlook for small businesses across the state.

Each state agency shall; with rules that affect small business; submit by June 13, 2009 their biennial review to the General Assembly and the SBRFB. The agency shall also submit a report describing the

specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence.

The SBRFB will work alongside the Department of Economic Development and General Assembly in securing proper funds for staffing and services for the board. In order for the board to administer the statutory requirements and ensure the initiatives set out are being achieved an adequate budget is needed.

FY2009 SBRFB Recommendations

1. Respond to Small Business Comments in a Timely Manner
 - ☐ SBRFB tracks response time from the day we forward a comment to an agency until the day we receive that agency's response. We will calculate timeliness in FY 2009 by defining "days" for rating purposes as calendar days.

| | |
|-----------------|----|
| 60 Days or less | =A |
| 60-75 Days | =B |
| 75-90 Days | =C |
| 90-105 Days | =D |
| Over 105 Days | =F |
2. Provide a Full and Complete Response to Small Business Comments
 - ☐ When SBRFB receives a comment from a small business concerning a regulatory issue, we forward that comment along with any substantiating documentation to the State agency involved. The answers help SBRFB to access the agency's responsiveness, how thoroughly it considered the effects of its actions, and whether any follow-up occurred. We consider the level of specificity and detail provided in each agency's response, and determine grades according to the following criteria:
 - The agency addressed all applicable questions posed in SBRFB's correspondence and responded to the specific comment made by the small entity.
 - The agency investigates the specific comment to ensure that the small entity was treated fairly and that their size was taken into account. The agency response provides detailed information regarding this investigation and the actions of the agency personnel involved in the enforcement activity.
 - The response came from the SBRFB liaison representative or someone from the agency directly related to the comment.
 - The agency utilized the specific comment to evaluate how similar small business situations are handled with respect to small business regulatory fairness and make any appropriate business practices changes.
3. Establish a Non-Retaliation Policy for Small Businesses
 - ☐ SBRFB defines "non-retaliation" policies as those designed to prevent acts that punish a small entity for objecting to an agency action. The SBRFB requires an agency to provide a copy of its policy, as well as the web address for those policies that are available to the public. If an agency demonstrates that all of the following elements exist, it will receive a letter grade of A:
 - The agency has adopted a written non-retaliation policy including disciplinary action for violation.
 - The agency ensures that its employees are properly trained on the non-retaliation policy.
 - The agency ensures that small entities are informed about and may access its non-retaliation policy.
4. Participate in Regulatory Fairness Hearings
 - ☐ Agency participation in Regulatory Fairness Hearings is a key element of the program. Small business comments can be fully developed during the hearing.

Missouri Small Business Regulatory Fairness Board

In many cases, agency and small entity communication begins immediately leading to prompt resolution of the situation. At many hearings, one or two agencies are invited, in advance, to give presentations regarding their approach to small business regulatory fairness. Such participation will weigh heavily in the evaluations. Additionally, when SBRFB knows that a small business entity is scheduled to testify on issues relating to the agency, the agency will be contacted directly at least 48 hours prior to such a hearing. SBRFB will post a rating of N/A when there were no agency issues presented at a RegFair Hearing.

5. Train Agency Staff on Missouri Small Business Regulatory Fairness program

- ☐ State agencies should provide training on an annual basis, for all rule development, enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Missouri Small Business Regulatory Fairness program. If an agency demonstrates that all of the following elements exist, it will receive a letter grade of A:
 - The agency provides and is able to document Regulatory Fairness training for all proper staffing including staff names and dates of training completion.
 - The content of the training includes SBRFB law and basic info on SBRFB: small business involvement during the rule development process, small business impact statements, small business comment compliance, post public hearing statements, Biennial Report, etc. The agency may choose to utilize the SBRFB Compliance Training CD to fulfill this requirement.

6. Complete Small Business Impact Statement on Rules affecting Small Businesses

- ☐ State agencies should include a small business impact statement for every proposed rule that impacts small businesses. A preliminary analysis should be conducted to identify those rules impacting small businesses. Those rules promulgated on an emergency basis, federally mandated or codify existing federal or state law shall not be required to submit a small business impact statement and should be stated as such in the agency's letter to the secretary of state. All other rules impacting small business shall be required to file a small business impact statement with the SBRFB. If an agency completes all of the following elements on all rules affecting small businesses, it will receive a letter grade of A:
 - Describe the methods your agency considered or used to reduce the impact on small businesses.
 - Explain how your agency has involved small businesses in the development of the proposed rule.
 - List the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.
 - Describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.
 - List direct and indirect costs (in dollars amounts) associated with compliance.
 - List types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.
 - Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

7. Notify SBRFB on Small Business Comments in Public Hearings

- ☐ For any proposed rules that affect small business, the state agency shall submit a small business post public hearing statement to the SBRFB after a public hearing is held. This requirement shall not be applicable to emergency rules. If an agency completes all of the following elements, it will receive a letter grade of A:
 - Include every rule that affects small business.
 - Describe how the opinions or comments from affected small businesses were solicited.
 - Summarize the public and small business comments.
 - Summarize the agency's response to those comments.

- Number of persons who attended the public hearing, testified at the hearing, and submitted written comments.
- If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change shall be included in the post public hearing statement.

8. Conduct Biennial Evaluation of all Rules affecting Small Businesses

- The statute states: "Each state agency shall submit before June 13, 2009 a report, including every rule affecting small business, to the General Assembly and the SBRFB per RSMo.536.325. This report shall describe the specific public purpose or interest for adopting the respective rule and any other reasons to justify its continued existence." The SBRFB will evaluate the agency response based on including every rule that affects small business and the completeness of each rule's review including the following:
 - Include every rule that affects small business.
 - Rules that create an undue barrier to the formation, operation, and expansion of small business.
 - Rules that duplicate, overlap, or conflict with one another.
 - Rules that exceed statutory authority.
 - Technology, economic conditions, or other relevant factors that justify changing the purpose of the rule or eliminating it completely.
 - Alternatives considered lessening the impact on small businesses.

Legacy: Small Business Comments

- 1) Sam Topchian, Quick and Safe LLC, Kansas City, 3/20/2007
- 2) Brenda Newberry, The Newberry Group, Saint Charles, 1/25/2006
- 3) Nancy Good, The Title Place, Joplin, 10/2/2006
- 4) Russ Henry, IdentiPro, Kansas City, 9/29/2006

Sam Topchian

Sam Topchian is the owner of Quick and Safe LLC, a healthcare transportation service. Quick and Safe is having problems with the new State Contractor (LogistiCare LLC) and their operation with State of Missouri Non-Emergency Medical Transportation, NEMT, services in terms of non-payment to their providers and sticking to the established payment scale. Mr. Topchian raises the question of what support for small business in state of Missouri is available to allow them to work as independent transportation provider for the Medicaid recipients in our State. Mr. Topchian also questions the power of new and old brokers being used by the state.

State Agency Response: The Centers for Medicare and Medicaid Services, CMS, the federal agency governing Medicaid, allows states to deliver NEWT services by using a single state-wide broker service or through contracts with individual transportation providers. Division of Medical Services, an agency within Department of Social Services, utilizes the brokerage model by contracting the services through single state-wide broker rather than contracting directly with transportation providers. A brokerage system was identified as the most efficient method for the administration of the NEMT program in Missouri. The broker is responsible for establishing and maintaining a provider network sufficient to provide access to state-wide Medicaid/MC+ covered services. The Department of Social Services contact LogistiCare, the broker for Missouri, and it was reported that according to their records, there are no outstanding payments owed to Quick and Safe.

SBRFB Response: The Board decided a follow up letter would be sent to the Department of Social Services to clarify the department's policy on a state-wide broker and also

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if there was anything in place to ensure that small businesses had the opportunity to sub-contract with the state-wide broker.

State Agency Response: The contract between MHD and the broker requires the broker to provide the least costly, most appropriate means of transportation, based on medical needs, for eligible participants to MO Healthnet covered services. The broker can not discriminate against any provider. The contract also states the broker shall not have more providers than necessary to meet its needs. Currently, the broker has 99 transportation subcontractors of which 76 are small businesses.

SBRFB Response: The Board decided to close this comment.

Brenda Newberry

Ms. Newberry is the owner of the Newberry Group. Ms. Newberry's comment was in relation to the requirement for a proposal security deposit. This is not something experienced when bidding in other states or when bidding on contracts worth well over \$3 M with the Federal Government for Information Technology. As indicated, neither the federal government nor other states require such a thing for IT services contracts because normally, as was the case for this RFP, the work is done as T&M or FFP with specific task orders containing the specific scope of work.

State Agency Response: The Office of Administration testified that the Division of Purchasing and Materials Management has implemented a policy that requires the State's Purchasing Director to approve proposal security deposit requirements. This policy will ensure that such deposits are required when the circumstances truly dictate such need. The state must consider all factors in its decision regarding economic impact and ownership residence is just a piece of the overall evaluation. Regarding your suggestion to use a vendor's lack of ability to acquire Federal Security clearances as a tool to disqualify bidders from performing cyber security work, we believe there may be some merit to this idea and will review this with the State's Chief Information Officer.

SBRFB Response: The Board sent a follow up letter on January 31, 2008 to confirm the testimony of the Office of Administration and encourage the department to veer away from desk drawer type rules.

State Agency Response: A response has not been received within the 60 day time period. The Board was in agreement to send a second reminder letter to the Office of Administration stating that their timely correspondence is reflected in the evaluations.

SBRFB Response: No response has been received after two reminder letters from the Office of Administration.

Nancy Good

Ms. Good has concerns with the inconsistency of licensing information with the Department of Insurance, Financial Institutions and Professional Registration. Ms. Good has met with the Department of Insurance in the past and there is still this lack of consistency with licensing requirements. Ms. Good also has concerns with the fees and the appropriateness of licensing requirements.

State Agency Response: Department of Insurance, Financial Institutions and Professional Registration have appointed a liaison to the SBRFB. The Consumer Affairs Division, within the Department of Insurance, released Bulletin 06-05 clarifying the current law. This bulletin was accompanied with the response. The Department is seeking legislation that would specify those individuals who must be licensed and raising the professional educational standards of title agents.

SBRFB Response: The Board asked for further progress of the legislation sought by DIFP to specify those individuals who must be licensed and raising the professional education standards of title agents. We also asked what outreach DIFP was conducting within the title community to ensure proper licensing is being done.

State Agency Response: The efforts of DIFP were successful as significant changes were made to the Missouri statutes regarding title insurance in the final version of SB 66, which was passed by the General Assembly in May and signed into law by the Governor in July. SB 66 addresses issues of who should be licensed and raised the professional examination and education standards for title agents. DIFP ensures compliance with its licensing requirements through enforcement. Whenever an investigation, in-house file review or market conduct examinations are commenced. DIFP staff check to ensure that all appropriate agency staff are properly licensed.

SBRFB Response: The Board decided to close this comment

Russ Henry

Mr. Henry submitted a bid with the Office of Administration for their electronic fingerprinting services but was underbid by an out of state agency. Mr. Henry made clear that his issue is not the decline of his company's bid to the state. Rather, his issue is that he cannot offer his clients the same quality services as the winning vendor. Mr. Henry explained that the state supplied a letter and email to contracted and non contracted professional registration agencies saying the state sponsored company would be the only company permitted to submit electronic fingerprints in the State of Missouri.

State Agency Response: While there is no cost to the state to fund the system, the overall cost of accessing the system is certainly an issue of consideration and it is a legitimate governmental purpose to keep the cost as low as possible. The contract the state entered into with Identix identifies Identix as the sole company permitted to access the MHSP CRID computer network to submit fingerprints electronically. This is not a political issue; this is a security issue and one which the State of Missouri takes very seriously. Having one vendor for a service is not uncommon in government. Identix employs many Missouri residents and pays taxes to the State of Missouri as well.

SBRFB Response: The Board sent a follow up letter to Office of Administration asking for more clarification on existing contracts with only one vendor. The Board also asked if additional security guards were discussed to or could be put in place to allow for more than one vendor.

State Agency Response: The Division of Purchasing and Materials Management maintain many contracts where one vendor is under contract for various services and supplies. The contracts range from bakery products, to copiers to trash collection services just to name a few. OA served solely in an administrative on behalf of the Missouri State Highway Patrol who made this purchase. In this case the guidelines of the Patrol clearly spelled out the equipment requirements within their available storage space.

SBRFB Response: The Board decided that a follow up letter would be sent to Office of Administration from SBRFB asking what they were doing to ensure small businesses had the opportunity to provide service in the one vendor contracts.

State Agency Response: OA conducts a transparent and open bid solicitation process so that all businesses have an equal opportunity to submit bids, regardless of the size of the business.

SBRFB Response: The Board decided to close this comment.



MISSOURI
DEPARTMENT OF ECONOMIC DEVELOPMENT

Missouri Small Business Regulatory Fairness Board

Administrative Support Provided by:
Missouri Department of Economic Development

Email: SBRFB@ded.mo.gov
Web: www.sbrfb.ded.mo.gov